THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ACCU-SPEC ELECTRONIC SERVICES, INC. Plaintiff,	:	C.A. NO.: 03-394 E
v.	:	
CENTRAL TRANSPORT INTERNATIONAL, INC. and LOGISTICS PLUS, INC. Defendants.	:	ELECTRONICALLY FILED

CENTRAL TRANSPORT INTERNATIONAL, INC.'S MOTION IN LIMINE TO PRECLUDE EVIDENCE OF DAMAGES IN EXCESS OF THE TARIFF'S LIMITATION OF LIABILITY

I. INTRODUCTION

Plaintiff Accu-Spec Electronic Services, Inc. ("Accu-Spec") has brought this lawsuit against Central Transport International, Inc ("Central Transport") seeking to recover monetary damages for alleged damage to freight while in interstate transportation between California and Pennsylvania Should Plaintiff prove that the freight was damaged in transit, Plaintiff may be entitled to recover certain reasonable and foreseeable damages; however, Accu-Spec's recovery of any damages against Central Transport is limited by the terms of the bill of lading and the applicable tariff Because these damages are limited on the facts of this case, Central Transport respectfully moves for an order precluding the introduction of any evidence of damages which exceed the contractual limitation of liability

II. FACTUAL BACKGROUND

In January of 2003, Accu-Spec engaged Logistics Plus, a freight forwarder, to transport a crate containing a used demo X-ray machine from Fremont, California to Accu-Spec's facility in McKean, Pennsylvania. Logistics Plus issued a rate to Accu-Spec for transportation of the freight. Logistics Plus then issued its own bill of lading which governed the terms of the shipment from origin to its destination. Logistics Plus in turn entered into a separate contract with Central Transport to physically pick up and deliver the freight. Central Transport had worked many times before with Logistics Plus on freight movements and Logistics Plus was well aware of the applicable tariffs involved in the movement of freight with Central Transport. Nevertheless, the bill of lading issued in this matter (attached hereto as Exhibit "A") includes only the weight of the freight (5280 lbs.) and the Class at which it was classified (Class 50). There is no description in the bill of lading of the freight to be transported beyond the description of a "crate." Central Transport had absolutely no contact with Accu-Spec whatsoever in arranging to transport the freight, and had no reason to know of the nature of the item being transported. All communications by Accu-Spec to make arrangements for transportation of the freight were made solely with representatives of Logistics Plus. Subsequent to delivery of the crate containing the X-ray machine, Accu-Spec notified Logistics Plus of damage to the freight.

Plaintiff filed this suit seeking to recover, *inter alia*, damages for the loss incurred when the X-ray machine was allegedly damaged during the movement of the freight. For the reasons discussed below, Central Transport's liability is limited in this matter to ten (10) cents per pound for the damage incurred, under the applicable contracts, and any evidence of damages which exceed that amount must be precluded as a matter of well settled law.

III. ARGUMENT

A. Plaintiff's damages are limited by the contracts and course of dealing

Logistics Plus issued its own bill of lading for this freight movement. Their bill of lading specifically states that the freight movement is "subject to the classifications and tariffs in effect on the date of issuance of this Bill of Lading." See Exhibit "A." The tariff that was applicable at the time of the bill of lading's issuance was Central Transport Tariff CTII 100-C (the "Tariff") (relevant portions of which are attached hereto as Exhibit "B").

Under the Uniform Straight Bill of Lading (the terms of which are incorporated by Tariff Item 360) and the Tariff Item 579, shippers are only entitled to value the shipment of used articles or commodities at ten (10) cents per pound per package, unless they declare a higher value and pay a higher charge. See Exhibit "B" at CT0193. Item 579 provides:

> Shipments of used machines or machinery will not be accepted by the carrier unless the shipper releases the value to not exceed ten (10) cents per pound per package or declares a higher value. . .
>
> If a shipment is inadvertently accepted without the declaration of released value, it will be considered to have been released to a value not exceeding ten (10) cents per pound per package, and charges addressed on that basis. Carrier's liability will be ten (10) cents per pound per package. A corrected bill of lading will not be accepted to change the released value once the shipment has been accepted by the carrier.

Id.

Accu-Spec may claim that they had no knowledge of this provision of the Tariff, as they did business with Logistics Plus and not Central Transport. However, Logistics Plus acting on behalf of Accu-Spec, cannot make such an argument. Logistics Plus is an experienced freight forwarder well-versed in the transportation industry. They have done business with Central Transport continuously for years, and were well aware of the Tariff and their obligations under same. In fact, as previously noted, Logistics Plus' own bill of lading incorporates the Tariff in its first line where it denotes that it is "subject to the classifications and tariffs in effect on the date of the issue of the Bill of Lading." See Exhibit "A." Accordingly, Logistics Plus and its principal, Accu-Spec, are responsible for being aware of the guidelines proscribed by the Tariff, and cannot claim to be unaware of its contents. American Cyanamid Co. v. New Penn Motor Express, Inc., 979 F.2d 310 (3d Cir. 1992). Any failure to notify Accu-Spec of its rights under the Tariff falls squarely on the shoulders of its freight forwarder, Logistics Plus.

In this case, where the value of the machinery was not disclosed on the bill of lading, Item 579 limits the liability of the carrier, Central Transport, to ten (10) cents per pound for any damage that may have occurred. The X-ray machine is admittedly a "used" machine, as it was a demo model previously used to demonstrate the capabilities of a new model. Thus, since the disclosed weight of the used X-ray machine on the bill of lading was 5280 lbs., Central Transport may only be held responsible for damages up to $528.00.

IV. **CONCLUSION**

In light of all of the foregoing reasons, this Honorable Court should grant Defendants' motion, and enter an order stating that liability for Central Transport is limited in this matter to a recovery of ten (10) cents per pound, as the freight which was shipped was used. Thus, the maximum that Accu-Spec may recover from Central Transport for the damage in this matter is $528.00, and any evidence of damage above that amount should be precluded.

Respectfully submitted,

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Dated: October 4, 2005

CERTIFICATE OF SERVICE

This is to certify that on this, the 4th day of October 2005, a copy of the foregoing Central Transport International, Inc.'s Motion In Limine to Preclude Evidence of Damages in Excess of the Tariff's Limitation of Liability was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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I hereby certify that on this, the 4th day of October 2005, a copy of the foregoing Central Transport International, Inc.'s Motion In Limine to Preclude Evidence of Damages in Excess of the Tariff's Limitation of Liability was served via U.S. first class mail delivery, upon the following:

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